उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CrA-476/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.476/2001

APPELLANTS

1. Bhuwan, s/o Gendlal, aged about 37 years, R/o Village Choradih, P.S. Arang, Distt. Raipur.
2. Somnath, s/o Nandu aged about 45 years.
3. Tikam, s/o Somanth, aged about 18 years.
4. Lakeshwar, s/o Somnath, age about 22 years.

All R/o Village Chorhadih, P.S. Arang, Distt. Raipur.

Vs

RESPONDENT State of Chhattisgarh through P.S. Arang, Distt. Raipur.

Present:
Mr. Arun Kochar, Advocate for the appellants.
Mr. Akhil Mishra, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(11th May, 2007)

Per L.C. Bhadoo, J;

This appeal is directed against the judgment of conviction and order of sentences dated 16th March, 2001 passed by learned 3rd Additional Sessions Judge, Raipur in S.T. No.62/2000 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 of the IPC, sentenced each of the

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	accused/appellant to undergo R.I. for life and to pay a fine of Rs.1000/-. Accused/appellants Tikam & Lakhesar have also been convicted under Section 325 of the IPC and each of them has been sentenced to undergo R.I. for 3 years and to pay a fine of R.500/-. In default of payment of fine, it was directed that accused/appellant Bhuwan & Somnath will further undergo R.I. for one month and accused/appellants Tikam & Lakhesar will further undergo R.I. for 1½ months. It is further directed that both the sentences shall run concurrently. Case of the prosecution, in brief, is that on 23.11.1999 at 9.00 a.m. Manvishram (since deceased) and his son Dhanendra (PW-1) were reaping the paddy crop in their field, at that time the accused/appellants arrived there and started reaping the paddy crop sown by the complainant. The deceased and his son objected, but the accused/appellants continued to reap the crop and thereafter, they started assaulting Manvishram & Dhanendra with lathi, sickle & axe, as a result of which on account of injuries sustained by Manvishram & Dhanendra, they became unconscious. Thereafter, the accused persons fled the scene of occurrence. In the meantime, cousin sister of Dhanendra namely Lalli (PW-8) arrived on the scene, she saw the incident and narrated the story to her grandmother Sukhwaro Bai, who reached on the spot and saw Manvishram in unconscious condition. Injured Dhanendra asked her to bring a bullock cart, but the same was not available. Thereafter, Vishabhar Prasad Chaturvedi (PW-7) brought a jeep in which Manvishram was taken to Arang Hospital. Dhanendra lodged the F.I.R. (Ex.P-1) in the Police Station Arang, which was registered by Shri R.S. Pandey (PW-9). Merg intimation (Ex.P-24) was	

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given by Moharir of the Police Station. Information Ex.P-23 regarding death of Manvishram was sent by Dr. G K. Choubey.

Sub Inspector Shri R.S. Pandey (PW-9) gave notice (Ex.P-3) to the Panchas and prepared inquest Ex.P-2 on the body of Manvishram. Body of Manvishram was sent for postmortem examination under Ex.P-25 to Primary Health Centre, Arang where Dr. A.S. Parihar (PW-2) conducted postmortem on the body of Manvishram. As per postmortem report, four incised wounds were found on the head, two incised wounds were found on the right hand, one lacerated wound on the right parietal region, there was swelling below the chin and mandible bone was fractured. There were six bruises, incised wound on the finger of right hand, left side 4th, 5th, 6th & 7th ribs were fractured and fractured ribs penetrated into left lung. Right hand ulna bone was also fractured and doctor opined that the cause of death was syncope as a result of head injuries, puncture of lung & profuse bleeding and death was homicidal in nature. His report is Ex.P-5.

Dr. A.S. Parihar (PW-2) had also examined the injuries on the body of Dhanendra and found that there was one incised wound, one lacerated wound, there was swelling on the right forearm, three bruises on various parts of the body, one lacerated wound on the ring finger of right hand and ulna bone of right hand was fractured.

During investigation, injuries of Lakheshwar & Tikam were also examined and one simple injury on the head of Tikam and two scratches on left knee & one lacerated wound on the left parietal region of the head of Lakheshwar were noticed by the doctor. While in police custody accused Somnath gave memorandum Ex.P-8 regarding lathi and under Ex.P-9 a

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lathi stained with blood was seized at the instance of accused Somanth. Accused Bhuwan gave memorandum Ex.P-10 while in the police custody regarding sickle and the same was seized under Ex.P-11 at the instance of accused Bhuwan. Accused Lakheshwar gave memorandum Ex.P-12 regarding sickle and the same was seized under Ex.P-13 at the instance of accused Lakheshwar. Accused Tikam gave memorandum Ex.P-14 regarding sickle and the same was recovered at the instance of accused under Ex.P-15. Site Plan (Ex.P-16) was prepared by the Investigating Officer. Clothes of accused Somnath, Bhuwan, Tikam & Lakheshwar were seized under Ex.P-17. Shoes, Chappals as well as blood stained & plain soil, broken piece of wooden club were seized from the place of occurrence under Ex.P-18. Site plan (Ex.P-26) was prepared by the Halka Patwari.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class, Raipur who in turn committed the case to learned Sessions Judge, Raipur from where learned 3rd Additional Sessions Judge Raipur received the case on transfer for trial. The prosecution in order to establish the charges against the accused/appellants examined 11 witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellants, as aforementioned.

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We have heard Mr. Arun Kochar, Advocate for the appellants and Mr. Akhil Mishra, P.L. for the respondent/State.

Mr. Kochar has not disputed the homicidal death of Manvishram. Moreover, in view of the evidence of Dhanendra (PW-1), injured eyewitness and son of deceased, as also the evidence of Dr. A.S. Parihar (PW-2) who conducted the postmortem on the body of Manvishram and stated that death of Manvishram was homicidal on account of syncope and excessive injuries due to injuries sustained by him on his head & lungs, it is established that death of Manvishram was homicidal in nature.

As far as the grievous injury sustained by Dhanendra (PW-1) is concerned, Dhanendra has stated that the accused persons attacked him and moreover, Dr. A.S. Parihar (PW-2) has stated that he examined the injuries of Dhanendra on 23.11.1999 and noticed following injuries:-

- One lacerated wound in the size of 6cm x 1.5 cm on the left side of head on right parietal region;
- One lacerated wound in the size of 4cm x 2.5cm x 2.5 cm on the right side of forehead;
- Swelling & bruises on the right forearm.
- Contusion in the size of 4cm in the right forearm.
- Contusion the size of 5 cm on the right shoulder.
- Lacerated wound on the ring finger of right hand; and
- Ulna bone of right hand was fractured.

Therefore, in view of the above medical evidence as well as ocular evidence, the simple & grievous injuries sustained by Dhanendra is also established.

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As far as involvement of the accused/appellants in the crime in question is concerned, Mr. Kochar argued that in fact accused persons were reaping their paddy crop in their field, at that time Manvishram & Dhanendra appeared on the scene with lathis, they attacked them and in that process accused Lakheshwar & Tikam also sustained injuries on their head and the accused persons have been implicated in a false crime. While drawing the attention of the Court towards the site plan Ex.P-26 prepared by the Halka Patwari, learned counsel for the appellants tried to impress upon that the accident took place at 'B' place where crop of Nandu, father of accused Somnath & Bhuwan was standing.

On the other hand, learned Panel Lawyer for the State supported the judgment of the trial court.

We have perused the evidence available on record as well judgment of the trial court.

Perusal of the trial court judgment reveals that no such plea was raised before the trial court that the deceased along with his son Dhanendra came on the place where the paddy crop of accused persons were standing and they started attacking them.

PW-1 Dhanendra is the injured eye-witness, who has stated that on 23.11.1999 at about 9.00 a.m. he along with his father was reaping the paddy crop on their field, there was other field in which paddy crop was sown by his father where accused persons came and started reaping the crop. His father objected the same, on which accused persons started abusing them in the names of mother & sister. Thereafter, they went to their house and returned within 10 minutes carrying lathi & sickle. On seeing this,

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they started going towards their house, by the time they reached upto the road the accused persons attacked them. Accused Somnath attacked with the axe on the head of his father and other accused persons also attacked. When he tried to intervene, accused Tikam & Lakheshwar attacked him with the sickle & lathi. On account of injuries sustained by his father, he became unconscious. Bhuwan attacked him with sickle on the right hand of his father as a result of which bone of right hand was cut. When his father fell down, accused Tikam & Lakheshwar attacked him as a result of which his right hand bone was fractured. Thereafter the accused persons ran away.

It appears from the cross-examination that some government land was there and for sowing the crop on that land a dispute was going on between the parties and this witness has stated that on the date of incident paddy crop sown by this father was standing on the land. In Para 15 he has categorically stated that paddy was sown by his father. In Para 18 he has further stated that it is incorrect to say that the place where his father had sown the paddy belongs to Nandu rather the field of Nandu is on the southern side of the field of Shanti Bai.

Halka Patwari prepared the site plan (Ex.P-26) after a month in the presence of Jantram and even in that site plan agricultural field of Nandu has been shown at the place 'B', whereas, the blood and other articles were found at the place 'A' i.e. at the distance of about 125 feet from the place where the paddy crop was standing. Even if the arguments advanced by Mr. Kochar is taken to be true, even then the evidence of Dhanendra (PW-1) that when they saw the accused persons coming with lathi & other

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	weapons, they started going towards their residence and by the time they reached on the road, the accused persons attacked them that is why the blood and other articles were found at place 'A'. Therefore, the place of occurrence 'A' was public road and as such there is no question of accruing right of private defence to the accused persons. Moreover, the injuries on the body of Lakheshwar & Tikam are superficial and simple nature, off-course one injury was on the head of each accused. If the postmortem of Manvishram is perused multiple injuries, incised wounds, lacerated wounds & contusions were caused by the accused persons which were about 17 in number. Even 4th, 5th, 6th & 7th left ribs were fractured, fractured ribs penetrated into the left lung and that was one of the causes for the death of Manvishram. Mandible bone & ulna bone of right hand of Manvishram were fractured and there were incised wounds on the skull also. Therefore, it is established that all the accused persons gave merciless beating to Manvishram. Similarly, injury report (Ex.P-5) of Dhanendra shows that there were two lacerated wounds on the head, contusions on the skull region & right ulna bone was fractured. Whereas, the injuries found on the body of Tikam & Lakheshwar were simple in nature and looking to the injuries of accused persons possibility of self infliction cannot be ruled out. As far as the evidence of Lalli (PW-8) is concerned, a close scrutiny of evidence of PW-1 Dhanendra reveals that in Para 20 he has stated that in fact Lalli came after half an hour of the incident, therefore, she cannot be termed as an eyewitness. In fact, she came after the accused party left the	

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scene of occurrence and therefore, no reliance can be placed on the evidence of Lalli that she witnessed the incident.

Looking to the number of injuries on the body of Manvishram caused by the accused persons, evidence of Dhanendra (PW-1) that all the four accused persons attacked his father and the fact that the place of occurrence where the accused attacked the deceased was a public road, the involvement of the accused persons in the crime in question is established. Therefore, we are of the considered opinion that the conviction of the accused persons under Section 302 of the IPC is based on the legal clinching evidence and we do not find any illegality or infirmity in the judgment of trial court. Similarly, there is no illegality or infirmity in the conviction of Tikam & Lakheshwar under Section 325 of the IPC for causing grievous injuries on Dhanendra (PW-1).

For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial court, the appeal of the appellants being devoid of any substance is liable to be dismissed and the same is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

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